

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

FAO No. 4728 of 2013

DATE OF DECISION : 04.12.2017

Naresh Kumar

.... APPELLANT

Versus

Lakhwinder Singh @ Lakha and others

.... RESPONDENTS

CORAM :- HON'BLE MR. JUSTICE AVNEESH JHINGAN

Present : Mr. Inderjeet Singh, Advocate,
for the appellant.

Mr. R.N. Singal, Advocate,
for respondent No.3 – Insurance Company.

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AVNEESH JHINGAN, J. (Oral)

The present appeal has been filed against the award dated 13.03.2013 passed by the Motor Accident Claims Tribunal, Yamuna Nagar at Jagadhri (for short, 'the Tribunal').

The factual matrix of the present case are that in a motor vehicular accident that occurred on 08.02.2011, Naresh Kumar, aged 43 years, suffered grievous injuries. He was going on bicycle and his bicycle was hit by a rashly and negligently driven Tanker bearing registration No. HR-67-1221 (for short, 'the offending vehicle'). As a result of the accident, he suffered injuries. He was taken to J.P. Hospital, Yamuna Nagar for treatment. FIR No. 23 dated 09.02.2011 was registered at Police Station Sadar Yamuna Nagar.

A claim petition under Section 166 of the Motor Vehicles Act, 1988 was filed by Naresh Kumar injured.

The Tribunal, after appreciating the facts and considering the evidence produced, awarded a sum of ₹ 1,35,391/- along with interest at the rate of 7.5% per annum.

Aggrieved of the said award, the present appeal has been filed by the claimant for enhancement of the compensation amount.

I have heard learned counsel for the parties and perused the paper-book as well as the record.

Learned counsel for the appellant argued that the appellant underwent two surgeries and was hospitalised from 08.02.2011 to 18.02.2011 and again from 03.03.2011 to 15.03.2011. His grievance is that the amount awarded under various heads is on lower side and no amount has been awarded for transportation, special diet and attendant. His further grievance is that the appellant suffered 15% permanent disability vis-a-vis right leg, but the Tribunal has taken his functional disability as only 5%.

Learned counsel for respondent No.3 – Insurance Company, on the other hand, argued that the amount awarded is just and equitable. He contends that no positive evidence has come on record that what is the effect of the injury on the occupation of the claimant.

In the present case, a person aged 43 years, suffered injuries in a motor vehicular accident. It is to be considered that he has suffered permanent disability because of no wrong done by him, but he is a sufferer

because of a wrong doer. His 15% permanent disability qua right lower limb was duly proved vide disability certificate Ex.PW8/A. The said document was proved by PW.8 Dr. Depender Sandhu. It is a fact that no positive evidence has come on record to show that what is the functional disability. In such circumstances, instead of remanding the matter back to the Tribunal, taking a clue from a decision of the Hon'ble Apex Court in **Raj Kumar Vs. Ajay Kumar & another**, 2011(1) SCC 343, since there is 15% disability qua limb, the permanent functional disability of the whole body is taken as 7.5%. The amount awarded for permanent disability would be re-calculated later in this order, by taking functional disability qua whole body as 7.5%.

There is no dispute on the fact that the injuries suffered by the appellant was fracture of right side tibia fibula. He had also to undergo a skin grafting surgery. There was atrophy of calf muscle and restricted right ankle movement. It was claimed in the petition that the claimant was doing labour work in agriculture fields. Though it was not proved, but in a case where the claim itself is that he was a labourer, there is no reason to disbelieve such a claim. The type of injuries have badly effected the appellant from doing his day to day work. His hospitalisation for 25 days ensure that he would have been advised special diet and would have been needing attendant during the period of hospitalisation and thereafter also. Since there was a fracture of the leg and it was operated twice, he would have required transportation for the treatment and after the period of treatment also. While awarding compensation for pain and

sufferings, it has to be considered that it included mental agony, trauma and harassment suffered. The labourer, who remained admitted in hospital for 25 days and was operated upon twice and there was a case of fracture, cannot be accepted to be able to do his labour job for weeks together.

The Hon'ble Apex Court in *G. Ravindranath @ R. Chowdary Versus E. Srinivas and another*, 2013(12) SCC 455, has held that in case of non-fatal injuries, both pecuniary and non-pecuniary damages should be compensated.

For the reasons mentioned above and the law laid down by the Hon'ble Apex Court in the aforesaid decisions, the amounts awarded by the Tribunal under various heads are enhanced and other amounts are awarded under the heads which were not considered by the Tribunal, as per the table given below :-

Head	Awarded by the Tribunal	Now awarded by this court
Medical treatment	₹ 86,351/-	₹ 86,351/-
Loss of future earnings on account of permanent disability	₹ 36,540/- (52,200 x 14 x 5%)	₹ 54,810/- (52,200 x 14 x 7.5%)
Pain and sufferings	₹ 5,000/-	₹ 35,000/-
Loss of amenities and loss of expectation of life	₹ 5,000/-	₹ 25,000/-
Loss of earning during the period of treatment	₹ 2,500/-	₹ 10,500/-
Transportation	Nil	₹ 10,000/-
Attendant	Nil	₹ 10,000/-
Special diet	Nil	₹ 10,000/-
Total	₹ 1,35,391/-	₹ 2,41,661/-

In view of the above, the award dated 13.03.2013 is modified to the extent that the compensation of ₹ 1,35,391/- awarded by the Tribunal is enhanced to ₹ 2,41,661/-.

The appellant shall be entitled to the enhanced amount along with interest at the rate of 6% per annum from the date of filing of the claim petition till realisation of the amount.

The appeal is partly allowed in the aforesaid terms.

December 04, 2017
ndj

(AVNEESH JHINGAN)
JUDGE

Whether speaking/reasoned

Yes/No

Whether Reportable

Yes/No